

Human Behavior Course 2004

Forensic Psychiatry

**David Benedek, MD
LTC, Medical Corps, US Army**

**Director, National Capital Area Forensic
Psychiatry Fellowship
Associate Professor of Psychiatry
Uniformed Services University**

HUMAN BEHAVIOR COURSE 2004

FORENSIC PSYCHIATRY - SLIDES

LEARNING OBJECTIVES AND STUDY QUESTIONS FOR DISCUSSION.

1. What are the forensic clinician's main ethical obligations?
2. Describe how the process and goals of clinical assessment are different from the process and goals of forensic assessment.
3. Compare and contrast the meaning of 'competence' versus 'capacity'. Use examples.
4. What is medical decision-making capacity? List and describe the factors to be considered when medical decision-making capacity is assessed.
5. Describe requirements for civil commitment.
6. What are the elements of medical malpractice?
7. Contrast the terms 'confidentiality' and 'privilege'. Are there exceptions to doctor-patient confidentiality? What are the most common examples?
8. What is the 'insanity defense'? Describe key historical standards for this defense.
9. Discuss the duty that psychiatrists have to protect third parties from harm by dangerous psychiatric patients.
10. What are the elements of informed consent?

Slide 1

Forensic Psychiatry – Terms & Concepts

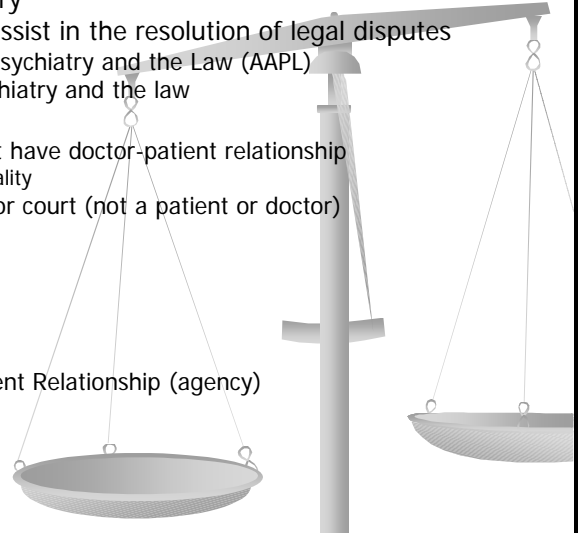
- ★ agency
- ★ fiduciary responsibility
- ★ criminal law
- ★ civil law
- ★ legislative law
- ★ criminal responsibility
- ★ insanity
- ★ malpractice
- ★ dual agency
- ★ adversarial process
- ★ functional capacity
- ★ decision-making capacity
- ★ competence
- ★ disability
- ★ civil commitment
- ★ involuntary treatment
- ★ narrative truth
- ★ historical truth
- ★ informed consent
- ★ confidentiality
- ★ privilege



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Forensic Psychiatry

- Sub-specialty of psychiatry
- Psychiatric expertise to assist in the resolution of legal disputes
 - American Academy of Psychiatry and the Law (AAPL)
 - Interface between psychiatry and the law
- Expert vs. Fact Witness
 - Expert witness does not have doctor-patient relationship
 - Absence of confidentiality
 - Referral from attorney or court (not a patient or doctor)
 - Prepare for courtroom
 - Curriculum vitae (CV)
 - Objectivity essential
- Evaluations
 - Often a team approach
 - Absence of Doctor-Patient Relationship (agency)
 - DSM IV-TR
 - Collateral sources



Ethical Issues

- Obligation to the court, not the patient
- Limits of confidentiality
- Evaluator, not treater
- Reliability of opinion
- Role in Death Penalty cases
- Military psychiatry has many similar issues



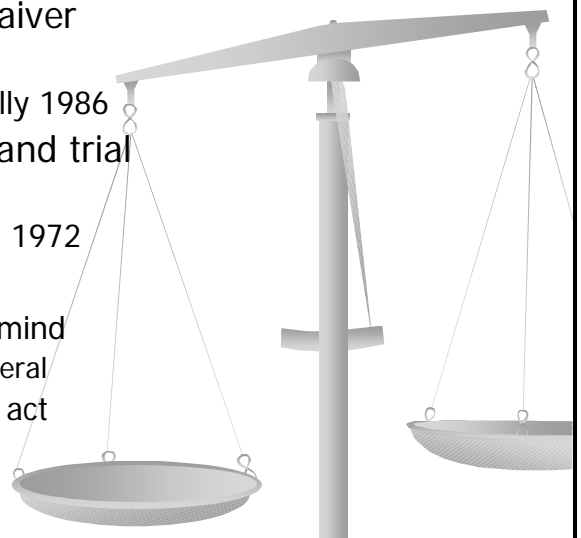
Competence vs. Capacity

- Legal Question vs. Functional abilities
- Legal Determination vs. Medical Opinion
- Competence is: Specific to task/time. therefore based on Contextual demands and causal influences
 - Competence to execute a will
 - Competence to manage financial affairs
 - Competence to stand trial



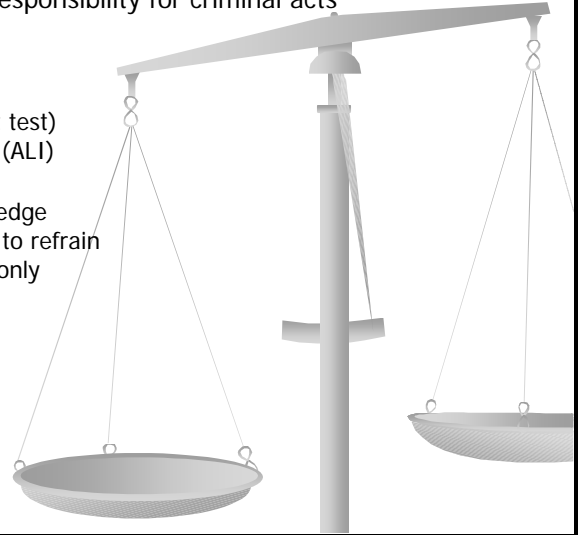
Criminal Forensic Psychiatry

- Confession and waiver
 - Miranda rights
 - Colorado v Connelly 1986
- Competence to stand trial
 - Dusky v US 1960
 - Jackson v Indiana 1972
- Guilt
 - Mens Rea--guilty mind
 - specific and general
 - Actus reus--guilty act



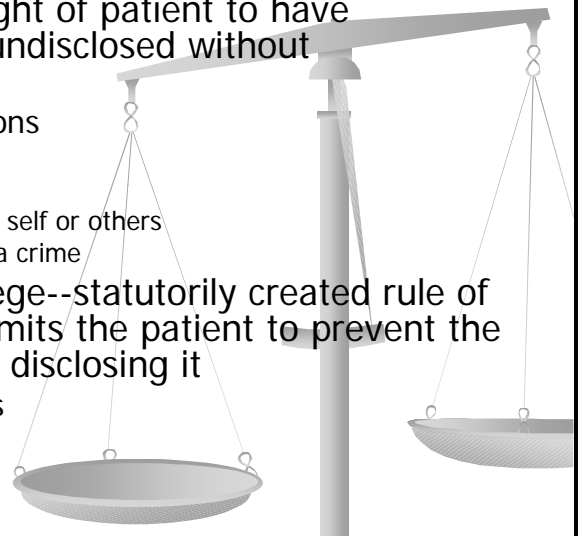
Insanity

- Insane defendants lack responsibility for criminal acts
- How is insanity defined?
- Insanity standards
 - M'Naghten—cognitive
 - Durham 1954 ("product test")
 - American Law Institute (ALI)
- Two "prongs"
 - Cognitive prong--knowledge
 - Volitional prong--ability to refrain
 - UCMJ--cognitive prong only
- Controversial diagnoses
- Other options
 - Diminished capacity
 - Guilty but mentally ill



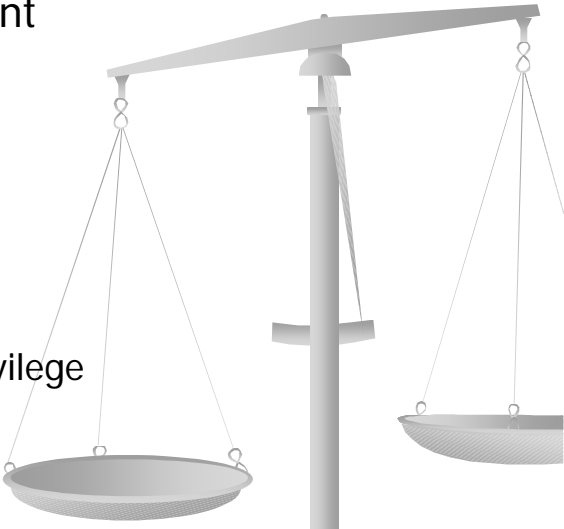
Confidentiality and Privilege

- Confidentiality--right of patient to have communications undisclosed without authorization
 - Statutory Exceptions
 - child abuse
 - competency
 - dangerousness to self or others
 - intent to commit a crime
- Testimonial privilege--statutorily created rule of evidence that permits the patient to prevent the psychiatrists from disclosing it
 - Similar exceptions




Informed Consent

- Informed Consent
 - Competency
 - Information
 - Voluntariness
- Exceptions
 - Emergencies
 - Incompetency
 - Therapeutic privilege
 - Waiver



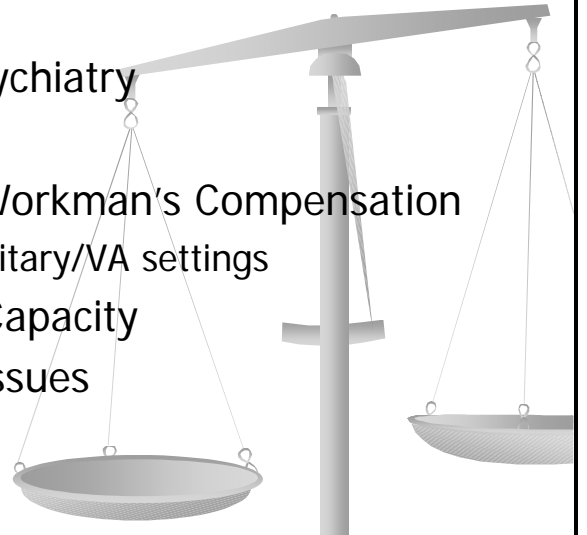
Malpractice

- Malpractice
 - A *tort*
 - negligence
 - liability--4 "D's"
 - duty
 - deviation
 - damages
 - direct causation



Other Topics

- Presentencing
- Correctional Psychiatry
- Personal Injury
- Disability and Workman's Compensation
 - Disability in military/VA settings
- Testamentary Capacity
- Child-Related Issues



Other Topics

- Civil Commitment--standards
- Guardianship and Conservatorship
- Right to Refuse Treatment
 - Lessard v Schmidt 1972
 - "rotting with their rights on"
- Duty to Protect
 - Tarasoff v Regents of the University of California 1976
- Sex offender laws
 - Kansas v Hendricks 1997



Military Psychiatry and Forensics

- Fitness for duty evaluations
- The medical board process
- Evaluation of “malingering”
- Limits of confidentiality
- Sexual assault cases
- Correctional psychiatry
 - GITMO

